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In The

United States

Circuit Court of Appeals

For the Ninth District

EUGENE SOL LOUIE,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Brief of Plaintiff in Error

Upon Writ of Error from the United States District Court for the District of Idaho, Northern Division.

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STATEMENT OF THE CASE.

Plaintiff in error, was indicted at the May term, 1919, of the District Court of the United States for the District of Idaho, Northern Division, on the 29th day of May, A. D., 1919, for the crime of having on or about the 24th day of May, A. D., 1919, in the County of Benewah, in the Northern Division of the District of Idaho, in and upon Indian country, to-wit, within the limits of the Coeur d'Alene Indian Reservation, committed an assault upon one Adeline Bohn Sol Louie, thereby inflicting upon her mortal wounds, of which she died. In

other words, the plaintiff in error, is charged with the crime of murder. The indictment alleges that at the time of the commission of the crime charged, plaintiff in error was a Coeur d'Alene Indian, who had theretofore been declared competent by the duly qualified authorities of the Department of Indian Affairs, and a member of the Coeur d'Alene Tribe of Indians; that he then and there had in common with all other members of said tribe, an interest in certain tribal funds thereafter to be disbursed to the members of the tribe. (Record pages 7-8). To the indictment, plaintiff in error entered a plea of not guilty.

The cause was tried to a jury, who by their verdict found the defendant guilty of murder in the second degree. (P. 12). During the progress of the trial, M. D. Colgrove, testified as a witness on behalf of the United States, to the following facts: That he lives at the Agency on the Coeur d'Alene Indian Reservation, at Sorrento, Idaho; that he is superintendent of the Coeur d'Alene Indian Reservation; that he has been such superintendent for nine years; that he knows the plaintiff in error, Eugene Sol Louie; that he is an Indian of the Coeur d'Alene tribe. That said Eugene Sol Louie has been given a patent in fee, which is supposed to be obtained through being competent; that this patent in fee was to certain lands on the Coeur d'Alene Indian Reservation; that prior to receiving said patent, Eugene Sol Louie had a trust patent for the land; that the United States held the land in trust for him; that plaintiff in error has an interest in funds to be later disbursed to the Coeur d'Alene tribe of Indians, or to members of that tribe by the United States through the witness's office; that he was acquainted with Adeline Bohn Sol Louie, the woman mentioned in the in-

dictment as having been killed. That she was a ward of the government. She had never been declared competent and had never received any patent in fee for any allotment. That she remained in that status up to the time of her death. That Eugene Sol Louie has no lineal descendants, or any children. He has a father and mother living on the reservation. They are Coeur d'Alene Indians and wards of the government in charge of the witness. That the land to which Eugene Sol Louie received his patent, lies within the Coeur d'Alene Indian Reservation, that is, the limits prior to the time the last cession was made. That these facts existed prior to the first day of May, 1919. That the plaintiff in error had received his patent before that time. (P. 16-18). That the description of the land patented by the government to the defendant, is the West Half of the Southeast quarter, and the East Half of the Southwest quarter of Section 11, Township 44 North of Range 5 West; that all of the land that was formerly the Coeur d'Alene Indian Reservation and not ceded, was not allotted to the Indians. There are no Indians on that reservation to whom allotments have not been made by the government except those born since May 2, 1910. That there are no tribal lands on that reservation at all. The status of the land is all of the land that had not been allotted was open to settlement on May 2, 1910, and of that land that was opened to settlement, there are about 18,000 acres that have not been settled upon. That is yet open. It all lies within the reservation as shown by the maps from the Indian Department. The reservation is shown on the maps, its shape. A part of it is in blue for the allotments, and the rest of it in white showing that it was land that

was opened to settlement. That he knew of the death of Adeline Sol Louie; she was residing on the land that was patented to the plaintiff in error at the time of her death. That this 18,000 acres which has not been settled on, was included in the cession by the Coeur d'Alene tribe back to the United States. They are interested in it in this way,—they get the money it would sell for. The land itself is owned by the government and platted and thrown open to entry by the white people. The Indian lands now consist of the individual allotments in severalty to the members of the tribe, and certain townsites on the reservation. The townsites are owned by the government and they are sold by the general land office and the money goes into a fund that is to be distributed prorata among the Indians. The proceeds arising from the sale of this 18,000 acres is turned over to the Indians and divided among them per capita. The government holds the title to that land in fee simple now. By this cession, the Indians relinquished their rights to the land, and when the patent comes to the purchasers, they are made direct to the purchaser from the United States. The price of the land is fixed by an appraising commission. Every forty acres is appraised at a certain price. There is a proviso, however, that if the land is not sold by a certain period, it might be sold at any valuation it might bring. This 18,000 acres consisted of land on top of the mountain peaks, which no one considered desirable, and it still remains unsold. That he does not exercise any supervision over plaintiff in error, except that he has to do with his part of the money that is in the United States Treasury, and that is yet unpaid. That Eugene Sol Louie has had one share of one distribution

of that money. This is the common fund that arises from the sale of the land. As to this particular allotment, he lives on that and does as he pleases, and if he wanted to rent it, he could rent, or if he wanted to sell it, he could sell it. (P. 19-21).

That upon the conclusion of the above testimony, it was stipulated in open court by the United States Assistant Attorney, Mr. Smead, and the attorneys for the plaintiff in error, as follows: That the injuries to Adeline Bohn Sol Louie, and mentioned in the indictment, were sustained by her upon the land mentioned in the testimony of witness Colgrove, viz., the West Half of the Southeast quarter, and the East Half of the Southwest quarter of Section 11, Township 44 North of Range 5 West, which prior thereto had been patented in fee to plaintiff in error, and that after receiving such injuries, deceased was removed from said lands to the allotment of one Nancy Lawrence Moctelme, where she died. Immediately following this stipulation, plaintiff in error, by his counsel, made the following objection and motion:

"Upon the testimony of the witness Colgrove, and the stipulation made and entered into by the respective counsel in open court, and the further statement of the District Attorney that there would be no further or additional evidence offered with reference to the status of the defendant or the lands allotted to him and testified to by the witness Colgrove, the defendant objects to any further testimony in this case, and moves that the case be dismissed, for the reason that this court has no jurisdiction of the case, for the reason that the testimony clearly shows that the defendant is not an Indian under the control or

superintendency of an Indian Agent or Superintendent; that he has been declared and adjudged by the government as competent to manage his own affairs, and that a patent to lands lying upon the so-called Coeur d'Alene Indian Reservation has been alloted to him, and that the injuries received by the deceased Adeline Bohn Sol Louie, were received by her upon these lands so patented to the defendant, and that they are not within or properly speaking a part of the Coeur d'Alene Reservation."

The court reserved his ruling upon said objection and motion, and took the same under advisement pending the hearing of further testimony. (21-23).

Dr. E. W. Hill testified on behalf of the government, that he is in the employ of the government at Desmet, Idaho, as medical officer for the Indian service on the Coeur d'Alene Reservation, and that he has been in such service for about two and one-half years. That he was at Tensed on the 5th of May, and received a telephone call from the Mission requesting him to see a young woman who was seriously injured. That he arrived there about a quarter of eight on May 5th. He found a girl practically unrecognizable from wounds. She was Adeline Bohn Sol Louie, the wife of Eugene Sol Louie, the plaintiff in error. She was at the house of Nancy Lawrence. That he is official physician for the United States government in the Indian service, and was appointed by the Indian Bureau. He is paid a salary and for that compensation serves the Indians without charge. It would be his duty to serve any Indian on the reservation without charge. The territory covering

his employment is officially known and referred to as the Coeur d'Alene Indian Reservation.

Witness Colgrove was recalled and testified further as follows:

"By a treaty stipulation with the Coeur d'Alenes, the United States agrees to provide a physician and blacksmith and a carpenter, and medicines for the Coeur d'Alenes and for that purpose, and embodied in the Indian bill, there is appropriated annually the sum of $3000.00. The duties of the physician under that is, to take care of all of the Indians. The physician cares for all the Indians, and the blacksmith does the work, and the carpenter does the work of the Indians on the reservation. However, by agreement, the carpenter has been changed to lease clerk, so that the money that formerly paid the carpenter's salary, now pays the lease clerk. This money is paid from an appropriation made by Congress, known as the Coeur d'Alene Support. That takes care of all of the Indians in that way within the limits of the old reservation; all of the Indians on our census roll. The census roll includes both the allotted Indians and the Indians that have received patent, and all. That roll contains the names of all emancipated Indians.

The place where the deceased died is not on the defendant's allotment. It is in the townsite. Nancy Moctelme bought three lots and houses in the townsite of Tensed, and the girl had been removed there before I got out. The defendant's wife, who died, had not been emancipated in any formal way. Her land is still under trust. Her allotment is still under trust. This land in the townsite,—these lots, are not held in trust. They have been built on and sold. They have town lot sales,

and these lots have been sold and patented and patents issued to purchasers, and she purchased. I don't know whether it was the first exchange, but she purchased from someone who purchased from the government. She bought this property after the property had been sold and houses erected thereon. She bought the houses and lots." (P. 23-25).

The above testimony is all that was introduced upon the trial of the case pending to show the status of plaintiff in error, as is shown by the bill of exceptions certified to by his Honor, the Trial Judge, at page 25 of the record as follows:

"Be it further remembered, that no other or further testimony of proof was introduced, had, taken or given upon the trial of said cause with reference to the status of the defendant, Eugene Sol Louie, or with reference to the status of the deceased, Adeline Bohn Sol Louie, at the time of the commission of the alleged crime, or at any other time, and that no other or further testimony was produced, had, given, or taken upon the trial of said cause with reference to the place where the said Adeline Bohn Sol Louie received the injuries from which she died."

There was adduced upon the trial of the cause by the United States, other evidence relating to the *corpus delicti.*

At the conclusion of the evidence introduced on behalf of the government, plaintiff in error, by his counsel, renewed the objection and motion above mentioned, and the court overruled and denied the same, to which ruling plaintiff in error then and there duly excepted, and exception was allowed. (P. 26).

Thereupon the defendant to maintain the issues on his part, called witnesses who were sworn and testified.

That there was a substantial conflict in the testimony, except in so far as the same related to the status of plaintiff in error and of deceased, and as to the place of the crime.

The evidence on behalf of the United States, and plaintiff in error, both clearly shows that at the time of the commission of the crime charged in the indictment, and of which plaintiff in error was convicted, and for some time prior thereto, the plaintiff in error had been declared competent by the duly qualified authorities of the Department of Indian Affairs to transact his own business and affairs, and that a patent had been issued to him by the United States for the West Half of the Southeast quarter, and the East Half of the Southwest quarter of Section Eleven, Township Forty-four North of Range Five West, in fee, and that the deceased, Adeline Bohn Sol Louie, was a Coeur d'Alene Indian, a ward of the government, and was residing upon said lands with defendant and that she received the injuries from which she died, on said lands, and that after sustaining said injuries and before her death, she was removed to the home of Nancy Lawrence Moctelme, on patented lots in the townsite of Tensed, Idaho, where she died, and was so certified to by his Honor, the trial judge, in settling the bill of exceptions herein. (P. 27).

After rendition of the verdict finding plaintiff in error guilty of murder in the second degree, and upon being arraigned in open court for judgment and sentence, plaintiff in error, by his counsel, moved the Honorable trial court, to arrest judgment upon said verdict as follows:

"And now after verdict against the said defendant and before sentence, comes the said defendant in his own person, and by McFarland & McFarland, his attorneys, and moves the Court here to arrest judgment herein and not pronounce the same for the following reasons, to-wit:

1. Because this Honorable Court has not jurisdiction of the person of said defendant, because the indictment shows upon the face thereof that prior to the commission of the crime charged, the defendant was not a ward of the government, had been emancipated and adjudged and declared competent by the duly qualified authorities of the Department of Indian Affairs of the government of the United States of America to conduct and transact his own affairs and business and protect himself and property, and because the evidence clearly shows that the assault committed and the injuries inflicted upon the said Aedline Bohn Sol Louie, the deceased, and of which she died, were committed and inflicted upon her at and upon the West One-half (W 1-2) of the Southeast quarter (SE 1-4) and the East One-half (E 1-2) of the Southwest quarter (SW 1-4) of Section Eleven (11), Township Forty-four (44) North of Range Five (5) West, and that at said time said lands and the whole thereof had been patented by the government of the United States to the said defendant, and the said defendant then and there held title in fee thereto.

2. That this Honorable Court has not jurisdiction of the crime charged against said defendant or the subject matter thereof, because the indictment shows upon the face thereof that prior to the commission of the crime charged, the defendant was not a ward of the government, had been emancipated

and adjudged and declared competent by the duly qualified authorities of the Department of Indian Affairs of the government of the United States of America, to conduct and transact his own affairs and business and protect himself and property, and because the evidence clearly shows that the assault committed and the injuries inflicted upon the said Adeline Bohn Sol Louie, the deceased, and of which she died, were committed and inflicted upon her at and upon the West One-half (W 1-2) of the Southeast quarter (SE 1-4), and the East One-half (E 1-2) of the Southwest quarter (SW 1-4) of Section Eleven (11), Township Forty-four (44) North of Range Five (5) West, and that at said time said lands and the whole thereof had been patented by the government of the United States to the said defendant, and the said defendant then and there held title in fee thereto, because of which said errors in the record herein, no lawful judgment can be rendered by the court upon the record in this cause."

Which said motion was denied by the court, and to which ruling of the court, the plaintiff in error then and there duly excepted, and assigned the same as error. And thereupon the court rendered its judgment upon said verdict as follows:

"It is hereby considered and adjudged that said defendant, Eugene Sol Louie, be imprisoned in the United States Penitentiary at McNeil's Island, Washington, for the term of twelve (12) years, and it is further ordered and adjudged that said defendant be, and is hereby remanded to the custody of the United States Marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof." (P. 15-16).

Within the time provided therefor by law and the order of the court, a bill of exceptions containing the ruling of the court, and the exceptions upon the matters above stated, was duly proposed, presented, settled and allowed, and thereafter a petition for writ of error, assignment of errors, and praecipe for record, were duly and regularly filed herein, and the cause is now properly before this Honorable Court upon the return of the writ of error and the record so made in this action.

SPECIFICATION OF ERRORS.

The plaintiff in error specifies and assigns the following errors upon which he relies, to-wit:

"1 The indictment herein is insufficient and does not state facts sufficient to constitute or charge any crime against the laws of the United States of America, nor any offense under Section 273 of the Penal Code of the United States.

2. The indictment herein shows upon the face thereof that this court has not jurisdiction of the person of the defendant.

3. The indictment herein shows upon the face thereof, that this court has not jurisdiction of the subject of this cause or action.

4. The trial court erred during the progress of the trial, in over-ruing defendant's objection to the admission of any further testimony, after the conclusion of the testimony of Dr. E. W. Hill, for the reason that the evidence disclosed the fact that the defendant was an emancipated Indian, had received his patent in fee, and that the injuries sustained by the deceased, and from which she died, was inflicted upon her upon the lands

patented to the defendant by the United States, and this court has not jurisdiction of said cause.

5. The trial court erred in over-ruling and denying defendant's motion to dismiss this cause at the conclusion of the testimony of said witness Hill, for the reason that the evidence disclosed the fact that the defendant was an emancipated Indian, had received his patent in fee, and that the injuries sustained by the deceased, and from which she died, was inflicted upon her upon the lands patented to the defendant by the United States. and this court has not jurisdiction of said cause.

6. The trial court erred at the close of the testimony for the United States in over-ruling and denying defendant's motion to dismiss said cause, for the reason that the evidence clearly shows that at the time of the commission of the crime charged, the defendant had been declared by the Indian Department of the United States, competent to manage his own business and affairs, had been emancipated and there had issued to him a patent for the lands included in an allotment previously made by the United States to him, and that the crime charged was committed upon said lands, and not upon an Indian Reservation, and that the injuries or wounds received by the deceased, and of which she died, were received upon the said lands and premises, and not upon an Indian Reservation, and that the deceased died upon patented land, and not upon an Indian Reservation, and the court did not have jurisdiction over the person of the defendant, or the subjects of said action.

7. The trial court erred in denying the motion in arrest of judgment on behalf of defendant, in this, that the indictment

shows upon the face thereof that this court has not jurisdiction of the defendant, for the reason that he has been declared or adjudicated competent to transact his own business and affairs.

That the testimony shows that the defendant, prior to the commission of the crime charged, was a Coeur d'Alene Indian, but had been declared and adjudicated competent to transact his own business, had been duly emancipated and had received from the United States a patent in fee to certain lands situated upon the Coeur d'Alene Indian Reservation, and that the injuries received by the deceased, and from which she died, were sustained upon said lands and premises, after the defendant had been so emancipated, and received said patent, and that the deceased died upon other patented lands and not upon the Coeur d'Alene Indian Reservation, and the trial court, for the above reasons, did not have jurisdiction of the subject of the action, or of the person of the defendant.''

UNDISPUTED AND CONCEDED FACTS.

All of the following facts are either conceded by both plaintiff in error and defendant in error, or are undisputed, viz:

1. That plaintiff in error and the deceased, Adeline Bohn Sol Louie, were at the time of the commission of the alleged crime herein, Indians and members of the Coeur d'Alene tribe of Indians, and resided within the boundaries of what is known as the Coeur d'Alene Indian Reservation in Benewah County, State of Idaho.

2. That plaintiff in error prior to the commission of said alleged crime, had been declared competent to manage and transact his own business and affairs, and had received a patent in fee from the United States Government to said lands situ-

ated within the boundaries of said Indian Reservation, and was residing thereon, and was authorized and empowered to lease, mortgage, or sell and convey said lands without any restrictions whatever.

3. That the wounds sustained by Adeline Sol Louie, and of which she died, were inflicted upon her upon the lands patented in fee to plaintiff in error as aforesaid, and that after sustaining said injuries, she was removed from said lands into the town of Tensed upon a town lot or piece of land which had theretofore been patented to another party, and there died.

4. That at all of the times herein stated, the said Adeline Bohn Sol Louie was the wife of plaintiff in error, and a ward of the Government.

ARGUMENT AND AUTHORITIES.

Counsel for plaintiff in error and defendant in error, agree that the only question which this Honorable Court is called upon to determine, is,—Did the United States District Court for the District of Idaho, Northern Division, have jurisdiction of said cause?

We contend that it did not, because the indictment alleges that at the time of the commission of the crime charged, plaintiff in error had been declared competent by the duly qualified authorities of the Department of Indian Affairs (P. 7-8), and the evidence above quoted clearly shows, that plaintiff in error was an emancipated Indian, had received a patent in fee to certain lands situated within the boundaries of the Coeur d'-Alene Indian Reservation, and could without any restriction whatever, dispose of or convey the same. That the crime charged, or rather the assault made upon the deceased, and of

which she died, was committed upon said lands, after which deceased was moved therefrom onto other lands within the boundaries of said reservation, where she died in consequence of the injuries sustained by her by reason of such assault, and the learned Judge who tried the case found, that at the time of the commission of the crime charged, and of which plaintiff in error was convicted and for sometime prior thereto plaintiff in error had been declared competent by the duly qualified authorities of the Department of Indian Affairs, to transact his own business affairs, and that a patent had been issued to him by the United States, for the West Half of the Southeast quarter, and the East Half of the Southwest quarter of Section Eleven, Township Forty-four North of Range Five West, in fee, and that the deceased, Adeline Bohn Sol Louie, was a Coeur d'Alene Indian, a ward of the government, and was residing upon said lands with defendant, and that she received the injuries from which she died, on said lands, and that after sustaining said injuries, and before her death, she was removed to the home of Nancy Lawrence Moctelme on patented lots in the townsite of Tensed, Idaho, where she died, (P. 26-27).

Knowing just what authorities were submitted to his Honor, who tried the case, upon the argument of the objection and motion to dismiss, and the motion in arrest of judgment, we are warranted in assuming that the learned Judge's rulings in over- ruling the objection and motion to dismiss, and in denying the motion in arrest of judgment, were based upon United States vs. Celestine, 215 U. S., 278 (54 L. Ed. 195), and State vs. Columbia George, 65 Pacific, 604, neither of which parallels the case at bar.

In United States vs. Celestine, supra, the court held that neither the treaty with the Omaha's March 16, 1854, (10 Stat. At L. 1043), or the treaty of Point Elliott of January 22, 1855, (12 Stat. At L. 927), which provides for a conditional alienation only, or the Act of March 3, 1885, paragraph 9, or the Act of February 8, 1887 (24 Stat. At L. 388, Cahp. 119) defeats the exclusive jurisdiction of the Federal Courts of crimes committed by one Indian upon the person of another on the Tulalip Reservation in the State of Washington. In our opinion this case is not at all in point. For as may be easily observed, the treaty with the Omahas and the treaty of Point Elliott, as well as the Act of February 8, 1887, established the status of Celestine greatly and materially different to that of the plaintiff in error. In that case the court says among other things:

"The fact of the patent to Chealco Peter, is all that is claimed shows a want of jurisdiction of the United States over the place of the offense, but the conditions of the treaty with the Omahas made by reference a part of the treaty with the Tulalip Indians, providing for only a conditional alienation of the lands, make it clear that the special jurisdiction of the United States has not been taken away."

In the Celestine case, the Supreme Court was called upon to determine the question of the jurisdiction of the Circuit Court of the United States for the western District of Washington, to try an Indian who was prosecuted for the murder of another Indian within the Tulalip Indian reservation, and the holding in that case was based upon the ground that the Tulalip Indians had taken their allotments pursuant to the treaty with the Omahas of March 16, 1854 (10 Stat. at L. 1043) and the

treaty of Point Elliott of January 22, 1855 (12 Stat. at L. 927), and that Indians taken under those treaties were not subject to the laws, both civil and criminal, of the state or territory in which they may reside, but were subject to the provisions of the Act of March 3, 1885 (23 Stat. at L. 385) whereby Congress reserved to the Federal Courts the exclusive jurisdiction to prosecute Indians for certain offenses therein named, including murder and larceny.

The Act of May, 1906, c. 2348, (34 Stat. 182), provided:

> "At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside, and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. Provided, the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent; Provided, further, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States; And provided further, That the provisions of this Act shall not extend to any Indians in the Indian territory."

Barnes Federal Code, p. 801, Section 35981.

The patent in fee issued by the Government to the plaintiff in error, was made under the provisions of this section, and plaintiff in error received a different title to that issued to Celestine as is shown by the record in this case, he having an un-

conditional title in fee simple, one which cannot be cancelled, defeated or set aside, by the Government, and unconnected with any restriction as to alienation, whereas the title of Celestine was conditional and could have been forfeited. Even his patent was subject to canncellation by the President, and he was denied thereby the right of alienation.

In the Act of May 8, 1906, above quoted, we find this language:

> "Provided further, That until the issuance of fee-simple patents, all allottees to whom trust patents shall hereafter be issued, shall be subject to the exclusive jurisdiction of the United States."

Now, the question naturally arises—after the issuance of fee-simple patents, do not such allottees cease to be subject to the exclusive jurisdiction of the United States? We cannot comprehend how any other construction can reasonably be given to that provision. In the last paragraph of the opinion of the court in the United States v. Celestine, supra, the court says:

> "The Act of May 8, 1906, (34 Stat. at L. 182, p. 2348) extending to the expiration of the trust period the time when the allottees of the Act of 1887 shall be subject to state laws, is worthy of note as suggesting that Congress in granting full rights of citizenship to Indians believed that it had been hasty."

Our construction of this language is that it strongly holds with our view that the trial court did not have jurisdiction of this cause.

A number of courts have announced the opinion concerning the attitude of Congress towards Indians, in this language:

> "Of late years a new policy has found expression in the legislation of Congress—a policy which looks to the breaking up of tribal relations, the establishing of the sep-

> arate Indians in individual homes, free from national guardianship, and charged with all the rights and obligations of citizens of the United States. Of the power of the government to carry out this policy there can be no doubt. It is under no constitutional obligations to perpetually continue the relationship of guardian and ward. It may, at any time, abandon its guardianship, and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris*. And it is for Congress to determine when and how that relationship of guardianship shall be abandoned. It is not within the power of the courts to overrule the judgment of Congress. It is true there may be a presumption that no radical departure is intended, and courts may wisely insist that the purpose of Congress be made clear by its legislation, but when that purpose is made clear, the question is at end.''

It will be conceded by the Government in this case, and the record shows (p. 19) that the tribe of Coeur d'Alene Indians ceded to the Government all of that property of the Coeur d'Alene Indian Reservation not allotted in severalty to the Indians, and on May 2, 1910, the Government opened said lands to settlement by homesteaders, and there now remains of the lands not allotted to the Indians and not claimed and entered by homesteaders about 18000 acres. That this act of cession by the Coeur d'Alene Indian tribe and the opening of the remaining lands not allotted to Indians by the Government for settlement, did not work any change in the boundaries of the Coeur d'Alene Indian Reservation, and the fact is, that there are a number of white settlers to whom patents have been issued, residing at the present time within the boundaries of said reservation, and the 18000 acres of undisposed land, and which is subject to entry and sale, are within the boundaries of said reservation, and that there are no tribal lands within the boundaries of said reservation.

When plaintiff in error was emancipated and a patent in fee isued to him by the Government conveying to him without reservation, restriction or condition, the lands described in the testimony herein, such lands were severed from the Coeur d'Alene Indian Reservation and were no longer a part thereof, and were not in any sense reserved lands or a part of the Coeur d'Alene Indian Reservation, and more than the lands conveyed by patent in fee to the white homesteaders within the boundaries of said reservation. That being true, the crime charged was not committed upon an Indian Reservation, and the plaintiff in error having received his patent in fee without reservation or restriction and unconditionally, is not amenable to the Federal Court, and the trial court in our opinion had no jurisdiction of the cause.

The other case upon which the trial court relied for his rulings, State v. Columbia George, 65 Pac. 604, in our opinion is not in point, and lends no aid in determining whether the trial court had jurisdiction in this cause. Columbia George, as the opinion shows, was a Umatilla Indian, and an allottee under a special act of Congress, and his status was established by the treaty of June 9, 1855, the Act of March 3, 1885 (23 Stat. 340 c. 319) and the Act of February 8, 1887 (24 Stat. 388 c. 119) known as the "Daws Act." The patents issued under the terms of the treaty provided that the United States hold the lands thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians, and that at the expiration of such period it would convey the same in fee by patent. Thus it is clearly shown that the status of Columbia George was not at all similar to that of the plaintiff in error.

Our contention is that the trial court was without jurisdiction, is sustained by the following authorities:

State v. Lott, 123 Pac. 491.
In Re Now-Gl-Zhuck, 76 Pac. 877-879.
State v. Nimrod, 138 N. W. 377.
State v. Tilden, 27 Idaho, 262.
People v. Daly, 38 Am. & Eng. Ann. Cas. 376.
In Re Heff, 196 U. S. 592 (49 L. Ed. 848).

The judgment herein should be reversed and the court below directed to dismiss the action, or give such other direction for the relief of plaintiff in error as may be in harmony with law and justice.

Respectfully submitted,

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